

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, STUDIES SOLUTIONS	)	
RESULTS, INC. and ACCURACY IN MEDIA,	)	
Plaintiffs	)	
	)	
v.	)	
	)	Case Number 1:04CV00814
CENTRAL INTELLIGENCE AGENCY	)	
Defendant	)	
	)	

DECLARATION OF ELIZABETH M. SMITH

INTRODUCTION

I, Elizabeth M. Smith, hereby declare and state:

1. I am the National Geospatial-Intelligence Agency (NGA) Classification Manager. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.
2. As the Classification Manager for NGA, I am responsible for protecting information that originates with NGA or otherwise implicates NGA interests. As part of my official duties, I ensure that any determinations as to the release or withholding of such information are proper and do not endanger NGA personnel or facilities, and do not jeopardize the interests of NGA.
3. As part of my official duties I am authorized to assess the current, proper classification of NGA information, based on the classification criteria of Executive Order 12958<sup>1</sup>, as amended,

<sup>1</sup> EO 12958 was amended by EO 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to EO 12958 are to EO 12958 as amended by EO 13292. On December 29, 2009, President Barack Obama issued EO 13526, the relevant provisions of which superseded EO 12958, as amended, and EO 13292 when they went into effect in June 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

“EO 12958”), and applicable laws and NGA regulations. Information that, if subject to unauthorized disclosure, reasonably could be expected to cause damage to national security shall be classified as CONFIDENTIAL; serious damage as SECRET; and exceptionally grave damage as TOP SECRET.

4. Roger Hall, Studies Solutions Results, Inc. and Accuracy in Media (“Plaintiff”) filed this complaint under the Freedom of Information Act (“FOIA”)<sup>2</sup> against the Central Intelligence Agency (“CIA”) on May 19, 2004. The complaint seeks various records relating to Prisoners of War (“POW”) and Missing in Action (“MIA”) in the area of Southeast Asia. See Compl. at 4-5.

5. In processing this FOIA complaint the CIA found two records responsive to the request that were deemed to contain NGA equities. These two records were forwarded by the CIA to the NGA for review and release recommendation. See CIA Letter, FOIA/PA Request of: F-2003-00449 CV-04-0814. The two documents were identified by the CIA as Document # C05359919 and Document # C05359868.

6. NGA had no objection to the release of Document # C05359919.

7. NGA objected to the release of NGA equities contained in Document # C05359868.

Document # C05359868 was originally classified by a person who has the authority as an Original Classification Authority. The Original Classification Authority determined that the document contained information that could reasonably be expected to cause exceptionally grave damage to national security.

8. Document # C05359868 underwent a review by the NGA Security Classification Management Branch in July 2009 at which time it was determined that in accordance with all applicable regulations, orders and classification guides, three pages of the document containing NGA equities remained currently and properly classified and was thus protected from release

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<sup>2</sup> 5 U.S.C. § 552.

pursuant to FOIA Exemption (b)(1). These three pages contain information protected under Section 1.4(c) of EO 12958. The information must be protected to prevent revealing the value of an intelligence interest, extent or knowledge or expertise, or an intelligence collection requirement. Specifically, release of this information would reveal an intelligence source or method which could reasonably be expected to cause exceptionally grave damage the national security interests of the United States and as such this information is protected from disclosure pursuant to EO 12958, Sec. 1.4(c).

FOIA Exemption (b)(1)

9. FOIA exemption (b)(1), 5 U.S.C. § 552(b)(1), provides that the FOIA disclosure provisions do not apply to matters that are: (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

10. Section 1.1(a) of EO 12958 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S., Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of EO 12958; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority is able to identify or describe the damage.

11. Intelligence sources and methods include the business practices and methodological basic “tools” used by NGA to accomplish its mission. They can include sophisticated technological tools, liaison relationships, NGA’s identification of targets for intelligence collection activity,

among other sensitive sources and methods. As stated above, release of the document responsive to Plaintiff's request would risk the disclosure of these intelligence sources and methods.

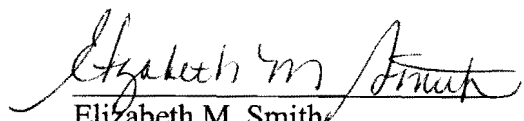
12. The information protected from disclosure in the instant case relates to information protected under EO 12958, Section 1.4(c) which protects intelligence activities, intelligence sources or methods. Intelligence sources and methods must be protected from disclosure in every situation where a certain intelligence interest, capability, or technique is unknown to those groups that could take countermeasures to nullify its effectiveness. Secret information-collection techniques, capabilities, or technological devices are valuable (from an intelligence-gathering perspective) only so long as they remain unknown and unsuspected. Once an intelligence source or method (or the fact of its use in a certain situation) is discovered, its continued successful use by NGA is seriously jeopardized. In fact, detailed knowledge of intelligence sources and methods must be protected from disclosure because such knowledge would be of material assistance to those who seek to detect, prevent, or damage U.S. intelligence operations.

CONCLUSION

13. The release of the documents in question would risk exposure of intelligence activities, sources or methods that would reasonably be expected to cause a certain level of damage to national security. As such these documents are properly classified and protected from release under FOIA exemption (b)(1) pursuant to EO 12958.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 4<sup>th</sup> day of August 2010.

  
Elizabeth M. Smith  
Classification Manager  
National Geospatial-Intelligence Agency